

**Introduced by Senators Alquist, Florez, Maldonado, and Pavley**

January 7, 2009

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An act to amend Sections 799 and 803 of the Penal Code, relating to statutes of limitation.

LEGISLATIVE COUNSEL'S DIGEST

SB 46, as introduced, Alquist. Sex offenders: commencing trial: time.

Existing law provides that the prosecution of an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

This bill would add specified sex offenses, including rape, sodomy, lewd or lascivious acts, oral copulation, continuous sexual abuse of a child, forcible acts of sexual penetration, and flight of a sex offender to avoid prosecution, to the list of crimes for which there is no statute of limitation for prosecution. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 799 of the Penal Code is amended to  
2     read:

3     799. ~~(a) Prosecution for an offense punishable by death or by~~  
4     ~~imprisonment in the state prison for life or for life without the~~  
5     ~~possibility of parole, or for the embezzlement of public money,~~  
6     ~~any of the following~~ may be commenced at any time.:

7     (1) *Offenses punishable by death.*

1 (2) *Offenses punishable by imprisonment in the state prison for*  
2 *life.*

3 (3) *Offenses punishable by imprisonment in the state prison for*  
4 *life without possibility of parole.*

5 (4) *Offenses relating to the embezzlement of public money.*

6 (5) *Offenses described in Section 261, 286, 288, 288a, 288.5,*  
7 *289, or 289.5.*

8 ~~This~~

9 (b) *This section shall apply in any case in which the defendant*  
10 *was a minor at the time of the commission of the offense and the*  
11 *prosecuting attorney could have petitioned the court for a fitness*  
12 *hearing pursuant to Section 707 of the Welfare and Institutions*  
13 *Code.*

14 SEC. 2. Section 803 of the Penal Code is amended to read:

15 803. (a) Except as provided in this section, a limitation of time  
16 prescribed in this chapter is not tolled or extended for any reason.

17 (b) No time during which prosecution of the same person for  
18 the same conduct is pending in a court of this state is a part of a  
19 limitation of time prescribed in this chapter.

20 (c) A limitation of time prescribed in this chapter does not  
21 commence to run until the discovery of an offense described in  
22 this subdivision. This subdivision applies to an offense punishable  
23 by imprisonment in the state prison, a material element of which  
24 is fraud or breach of a fiduciary obligation, the commission of the  
25 crimes of theft or embezzlement upon an elder or dependent adult,  
26 or the basis of which is misconduct in office by a public officer,  
27 employee, or appointee, including, but not limited to, the following  
28 offenses:

29 (1) Grand theft of any type, forgery, falsification of public  
30 records, or acceptance of a bribe by a public official or a public  
31 employee.

32 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

33 (3) A violation of Section 25540, of any type, or Section 25541  
34 of the Corporations Code.

35 (4) A violation of Section 1090 or 27443 of the Government  
36 Code.

37 (5) Felony welfare fraud or Medi-Cal fraud in violation of  
38 Section 11483 or 14107 of the Welfare and Institutions Code.

1 (6) Felony insurance fraud in violation of Section 548 or 550  
2 of this code or former Section 1871.1, or Section 1871.4, of the  
3 Insurance Code.

4 (7) A violation of Section 580, 581, 582, 583, or 584 of the  
5 Business and Professions Code.

6 (8) A violation of Section 22430 of the Business and Professions  
7 Code.

8 (9) A violation of Section 10690 of the Health and Safety Code.

9 (10) A violation of Section 529a.

10 (11) A violation of subdivision (d) or (e) of Section 368.

11 (d) If the defendant is out of the state when or after the offense  
12 is committed, the prosecution may be commenced as provided in  
13 Section 804 within the limitations of time prescribed by this  
14 chapter, and no time up to a maximum of three years during which  
15 the defendant is not within the state shall be a part of those  
16 limitations.

17 (e) A limitation of time prescribed in this chapter does not  
18 commence to run until the offense has been discovered, or could  
19 have reasonably been discovered, with regard to offenses under  
20 Division 7 (commencing with Section 13000) of the Water Code,  
21 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
22 6.7 (commencing with Section 25280) of, or Chapter 6.8  
23 (commencing with Section 25300) of, Division 20 of, or Part 4  
24 (commencing with Section 41500) of Division 26 of, the Health  
25 and Safety Code, or under Section 386, or offenses under Chapter  
26 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
27 (commencing with Section 4000) of Division 2 of, Section 6126  
28 of, Chapter 10 (commencing with Section 7301) of Division 3 of,  
29 or Chapter 19.5 (commencing with Section 22440) of Division 8  
30 of, the Business and Professions Code.

31 ~~(f) (1) Notwithstanding any other limitation of time described~~  
32 ~~in this chapter, a criminal complaint may be filed within one year~~  
33 ~~of the date of a report to a California law enforcement agency by~~  
34 ~~a person of any age alleging that he or she, while under the age of~~  
35 ~~18 years, was the victim of a crime described in Section 261, 286,~~  
36 ~~288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter~~  
37 ~~293 of the Statutes of 1991 relating to penetration by an unknown~~  
38 ~~object.~~

39 ~~(2) This subdivision applies only if all of the following occur:~~

1     ~~(A) The limitation period specified in Section 800, 801, or 801.1,~~  
2     ~~whichever is later, has expired.~~

3     ~~(B) The crime involved substantial sexual conduct, as described~~  
4     ~~in subdivision (b) of Section 1203.066, excluding masturbation~~  
5     ~~that is not mutual.~~

6     ~~(C) There is independent evidence that corroborates the victim's~~  
7     ~~allegation. If the victim was 21 years of age or older at the time~~  
8     ~~of the report, the independent evidence shall clearly and~~  
9     ~~convincingly corroborate the victim's allegation.~~

10    ~~(3) No evidence may be used to corroborate the victim's~~  
11    ~~allegation that otherwise would be inadmissible during trial.~~  
12    ~~Independent evidence does not include the opinions of mental~~  
13    ~~health professionals.~~

14    ~~(4) (A) In a criminal investigation involving any of the crimes~~  
15    ~~listed in paragraph (1) committed against a child, when the~~  
16    ~~applicable limitations period has not expired, that period shall be~~  
17    ~~tolled from the time a party initiates litigation challenging a grand~~  
18    ~~jury subpoena until the end of the litigation, including any~~  
19    ~~associated writ or appellate proceeding, or until the final disclosure~~  
20    ~~of evidence to the investigating or prosecuting agency, if that~~  
21    ~~disclosure is ordered pursuant to the subpoena after the litigation.~~

22    ~~(B) Nothing in this subdivision affects the definition or~~  
23    ~~applicability of any evidentiary privilege.~~

24    ~~(C) This subdivision shall not apply where a court finds that the~~  
25    ~~grand jury subpoena was issued or caused to be issued in bad faith.~~

26    ~~(g)~~

27    ~~(f) (1) Notwithstanding any other limitation of time described~~  
28    ~~in this chapter, a criminal complaint may be filed within one year~~  
29    ~~of the date on which the identity of the suspect is conclusively~~  
30    ~~established by DNA testing, if both of the following conditions~~  
31    ~~are met:~~

32    ~~(A) The crime is one that is described in subdivision (c) of~~  
33    ~~Section 290.~~

34    ~~(B) The offense was committed prior to January 1, 2001, and~~  
35    ~~biological evidence collected in connection with the offense is~~  
36    ~~analyzed for DNA type no later than January 1, 2004, or the offense~~  
37    ~~was committed on or after January 1, 2001, and biological evidence~~  
38    ~~collected in connection with the offense is analyzed for DNA type~~  
39    ~~no later than two years from the date of the offense.~~

1 (2) For purposes of this section, “DNA” means deoxyribonucleic  
2 acid.

3 ~~(h)~~

4 (g) For any crime, the proof of which depends substantially  
5 upon evidence that was seized under a warrant, but which is  
6 unavailable to the prosecuting authority under the procedures  
7 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
8 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
9 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
10 claims of evidentiary privilege or attorney work product, the  
11 limitation of time prescribed in this chapter shall be tolled from  
12 the time of the seizure until final disclosure of the evidence to the  
13 prosecuting authority. Nothing in this section otherwise affects  
14 the definition or applicability of any evidentiary privilege or  
15 attorney work product.